



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Julian Montgomery
State Highway Engineer
Austin, Texas

Dear Sir:

Opinion No. G-1743
Re: S. B. No. 427, Regular Session,
46th Legislature -- Appropria-
tion Bill -- Highway Department
-- Certain field expenses --
Maintenance and miscellaneous
items -- "Balances" rider.

We beg to acknowledge receipt of your letter of Novem-
ber 28, 1939, requesting an opinion upon the following case:

"In Senate Bill No. 427, the Forty-sixth Legislature made appropriations to pay the salaries of Highway Department employees occupying the titles shown in the bill, and also appropriated the sum of \$92,539.00 for each year of the biennium for 'stationary and office supplies, printing forms, rent on tabulating machines, postage, telephone and telegraph, machine supplies and repairs, supplies for janitors, equipment, printed forms for county tax collectors, express and freight, and contingent expenses.' This appropriation, as we understand it, is for the needs of the itemized divisions and employees preceding such item in the bill.

"In the riders following the Highway Department section of the bill, it is provided that after deducting the total of the specific appropriations theretofore made, all funds or balances of funds remaining in the State Highway Fund on September 1, 1939, and all funds coming into the State Highway Fund from all sources during the new biennium be appropriated to the State Highway Department for the establishment, construction, and maintenance of a system of State highways.

In this respect, the provisions of this bill are the same as the provisions in the Departmental Appropriation Bills over a period of eight or ten years. The construction of this Department has been that the amount of money itemized and appropriated for stationery, office supplies, et cetera is for the purpose of meeting the needs of the itemized employees of the Department for such supplies and services.

*By far the greater number of employees of this Department are field employees whose positions are not itemized in the Departmental Appropriation Bill and for the payment of whose salaries the Legislature has made no specific appropriations. The duties of all such field employees pertain to and are directly chargeable to the establishment, construction, and maintenance of a system of highways, and their salaries and expenses as well as all of the supplies and equipment necessary for their use in the past have always been paid directly from the State Highway Fund. This procedure prior to the beginning of this fiscal year has never been questioned.

The office of the Comptroller of Public Accounts has questioned and refused to pass for payment certain vouchers covering payment of current purchases of items of materials and supplies used in the construction and maintenance of highways because the Highway Department has charged such items against the Highway Fund for the construction and maintenance of highways rather than against the Legislative budget of \$92,539.00 appropriated by the Legislature for the administration of the itemized divisions of the Highway Department. Several of the items in question were delivered in Austin because of economies made at the time of the purchase, but later were sent to the field districts for use, however, all of the items without exception were used by field employees not itemized in the Appropriation Bill.

You follow this statement with a group of typical items which you construe as coming within the benefit of the Highway Fund appropriation, as above stated and outlined by you.

Your specific inquiry is as follows:

"Please advise if it is proper for the items above listed and explained and other items of similar nature and use to be charged against the Highway Fund as a part of the cost of construction and maintenance of highways rather than against the appropriation made for the payment of materials and supplies for the administration of the various budgeted divisions of the Highway Department."

Your inquiry should be answered in the affirmative.

In the appropriation for the Highway Department there is an item of Maintenance and Miscellaneous as follows:

- "1. Stationary and Office Supplies, Printing Forms, Rent on Tabulating Machines, Postage, Telephone and Telegraph, Machine Supplies and Repairs, Supplies for Janitors, Equipment, Printed Forms for County Tax Collectors, Express and Freight, and Contingent Expenses.....\$ 92,539.00 \$92,539.00
- "2. Traveling Expenses..... 12,000.00 12,000.00"

This item follows the general appropriation to the Department for its various divisions, and being in juxtaposition to these divisions, it is properly referable to them; that is to say, this appropriation, aggregating \$104,539.00 per year, covers the items therein included with respect to the preceding budgeted divisions, and from that specific appropriation vouchers for such items should be approved and paid.

In the rider subjoined to the appropriation for the Highway Department there is the following:

" * * * provided further that all funds or balances of funds on hand September 1, 1939, and all funds coming into the State Highway Fund, and derived from registration fees or from other sources, after deducting the total of the specific appropriation herein made, are hereby appropriated to the State Highway Department for the establishment of a system of State Highways and the con-

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struction and maintenance thereof as contemplated and set forth in said Chapter 1, Title 116, and Chapter 186, General Laws of the Regular Session of the Thirty-ninth Legislature, and amendments thereto."

Items of expense of the class indicated by you should be paid from this appropriation, for they undoubtedly should be construed as contributing to the construction and maintenance of a system of State highways, and not being payable out of the items for maintenance and miscellaneous, as previously explained, there is no other appropriation from which such items could properly be paid.

We have examined the file of vouchers with respect to the claims involved here, and from that examination we find the information accompanying them is not as full and definite as that given by you to us, and we are thinking the confusion incident thereto most likely would have been avoided if such definite and detailed information had accompanied the vouchers.

Very truly yours

ATTORNEY GENERAL OF TEXAS

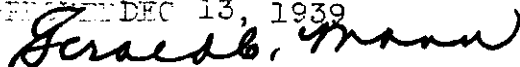
By



Cecil Spear
Assistant

OS-MR

APPROVED DEC 13, 1939



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